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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999-6594-02]

RIN 0648-XE336

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2016-2018 Atlantic Bluefish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing final specifications for the 2016-2018 bluefish fishery, including catch restrictions for commercial and recreational fisheries. This action is necessary to comply with the implementing regulations for the Bluefish Fishery Management Plan that require us to publish specifications. The intent of this action is to implement specifications necessary to constrain harvest of this species within scientifically sound recommendations to prevent overfishing.

DATES: The final specifications for the 2016-2018 bluefish fishery are effective August 1, 2016, through December 31, 2018.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the

specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at www.mafmc.org and www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scheimer, Fishery Management Specialist, (978) 281-9236.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Bluefish fishery is jointly managed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.162, and are described in the proposed rule. The proposed rule for this action published in the **Federal Register** on March 31, 2016 (81 FR 18559), and comments were accepted through April 15, 2016.

Final Specifications

A description of the process used to estimate bluefish stock status and fishing mortality, as well as the process for deriving the annual catch limit (ACL) and associated quotas and harvest limits, is provided in the proposed rule and in the bluefish regulations at § 648.160 through 162, and are not repeated here. The stock is not overfished or experiencing overfishing, and the specifications described below reflect the best available scientific information for bluefish. The final 2016-2018 bluefish specifications are shown in Table 1.

Table 1. Final 2016-2018 Bluefish Specifications

	2016		2017		2018	
	lb	mt	lb	mt	lb	mt
OFL	25,763,220	11,686	26,444,448	11,995	27,972,252	12,688
ABC	19,455,796	8,825	20,641,883	9,363	21,814,742	9,895
ACL	19,455,796	8,825	20,641,883	9,363	21,814,742	9,895
Management Uncertainty	0	0	0	0	0	0
Commercial ACT	3,307,485	1,500	3,509,120	1,592	3,708,506	1,682
Recreational ACT	16,148,311	7,325	17,132,763	7,770	18,106,236	8,213
Commercial Discards	0	0	0	0	0	0
Recreational Discards	2,989,468	1,356	2,989,468	1,356	2,989,468	1,356
Commercial TAL	3,307,485	1,500	3,509,120	1,592	3,708,506	1,682
Recreational TAL	13,158,843	5,969	14,143,295	6,414	15,116,768	6,857
Combined TAL	16,466,328	7,469	17,652,415	8,006	18,825,274	8,539
Expected Recreational Landings	11,581,548	5,253	11,581,548	5,253	11,581,548	5,253
Transfer	1,577,295	715	2,561,747	1,161	3,535,220	1,604
Commercial Quota	4,884,780	2,215	6,070,867	2,753	7,243,726	3,286
Recreational Harvest Limit	13,158,843	1,500	14,143,295	6,414	15,116,768	6,857

A transfer of quota from the recreational fishery to the commercial sector is permitted under the FMP up to a commercial fishery quota of 10.50 million lb (4,763 mt), provided the combined expected recreational landings and the commercial quota does not exceed the total TAL. The proposed rule for this action contained a sector quota transfer based on preliminary 2015 recreational landings data. In the interim between the proposed rule and now, the final 2015

Marine Recreational Information Program (MRIP) estimates were released in June and subsequently revised in July. The final bluefish catch estimate is higher than the preliminary value used to calculate the proposed measures, but notably lower than the MRIP information provided in June. Using these updated recreational landings to project 2016 catch allows a transfer of quota from the recreational sector to the commercial fishery (1.57 million lb (715 mt)) and results in a final commercial quota of 4,884,780 lb (2,215 mt).

Consistent with Council recommendations, these final specifications do not allocate research set-aside quota for 2016 through 2018; therefore, no additional adjustments to commercial or recreational allocations are needed.

Given historical landings, the reduced commercial quota could be constraining to the fishery. Even though the commercial quota is reduced, the bluefish quota management system has been timely and effective at constraining catch in the past, and NMFS does not expect any state to exceed their quota.

Final Recreational Possession Limit

Consistent with the recommendation of the Council, this final rule maintains the status quo daily recreational possession limit of up to 15 fish per person for 2016.

Final State Commercial Allocations

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under §

648.162(e). The Regional Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

During the processing of this final rule, the Commonwealth of Virginia agreed to transfer 50,000 lb (22,680 kg) of bluefish quota to the State of Rhode Island and 30,000 lb (13,607 kg) to the State of New York, and the State of Florida agreed to transfer 50,000 lb (22,680 kg) to the State of Rhode Island. The state commercial transfers will not preclude the overall annual quota from being fully harvested, and will address contingencies in the fishery. In addition, the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These transfers have been approved and are incorporated within this final rule and the individual state quota allocations have been adjusted to reflect the transfer. The final state commercial allocations for 2016-2018 are shown in Table 2. The initial quotas are based on percentages specified in the FMP. No states exceeded their quota in 2015, therefore, no accountability measures are being implemented for the 2016 fishing year.

Table 2. Bluefish Commercial State-by-State Allocations for 2016-2018

State	FMP Percent Share	2016 Initial Quota		transfer		2016 Final Quota		2017 Initial Quota		2018 Initial Quota	
		kg	lb	kg	lb	kg	lb	kg	lb	kg	lb
ME	0.6685	14,812	32,655			14,812	32,655	18,408	40,584	21,965	48,424
NH	0.4145	9,184	20,247			9,184	20,247	11,414	25,164	13,619	30,025
MA	6.7167	148,822	328,096			148,822	328,096	184,958	407,762	220,691	486,539
RI	6.8081	150,847	332,561	45,359	100,000	196,206	432,561	187,475	413,311	223,694	493,160
CT	1.2663	28,057	61,856			28,057	61,856	34,870	76,875	41,607	91,727
NY	10.3851	230,103	507,289	13,608	30,000	243,710	537,289	285,974	630,466	341,223	752,268
NJ	14.8162	328,282	723,739			328,282	723,739	407,994	899,472	486,816	1,073,245
DE	1.8782	41,615	91,746			41,615	91,746	51,720	114,023	61,712	136,052
MD	3.0018	66,511	146,631			66,511	146,631	82,661	182,235	98,630	217,442
VA	11.8795	263,214	580,287	-36,287	-80,000	226,926	500,287	327,126	721,189	390,325	860,518
NC	32.0608	710,371	1,566,100			710,371	1,566,100	882,858	1,946,369	1,053,421	2,322,397
SC	0.0352	780	1,719			780	1,719	969	2,137	1,157	2,550
GA	0.0095	210	464			210	464	262	577	312	688
FL	10.0597	222,893	491,394	-22,680	-50,000	200,213	441,394	277,014	610,711	330,531	728,697
Total	100.0001	2,215,699	4,884,780			2,215,699	4,884,780	2,753,699	6,070,867	3,285,699	7,243,726

Changes from the Proposed Rule

The 2015 recreational catch for bluefish for was previously projected to be 10,980,469 lb (4.980 mt), which would have allowed for a transfer of 2,178,374 lb (984 mt) from the recreational sector to the commercial fishery. As previously noted, the 2015 MRIP estimate changed on two occasions when information was finalized. The final recreational catch for 2015 is now known to be 11,581,548 lb (5,253 mt), which results in a smaller commercial quota of 4,884,780 lb (2,215 mt) than was outlined in the proposed rule.

Comments and Responses

The public comment period for the proposed rule ended on April 15, 2016. There were four comments received from the public, including recreational and commercial fishermen.

Comment 1: One commenter criticized the data used to estimate recreational catch, stating that the catch estimate was arbitrary and capricious, and requested to know where the numbers come from. The commenter did not suggest other data or approaches that might be better suited for establishing specifications.

Response: NMFS disagrees that the recreational catch estimate is arbitrary and capricious. Recreational catch was estimated using data from MRIP, and a newly peer-reviewed and approved methodology that improved the incorporation of small sample sizes was used to generate the final estimates. A publically searchable database and information about the program are available at <http://www.st.nmfs.noaa.gov/recreational-fisheries>. The most up-to-date stock assessment and recreational and commercial catch data were used. Consistent with National Standard 2 of the Magnuson-Stevens Act, NMFS used the best scientific information available and is approving specifications for the bluefish fishery. The final specifications in this rule are

consistent with the FMP and recommendations of the Council.

Comment 2: Two commenters were unclear why we proposed to reduce harvest by 10 percent if there was no overfishing, and were unclear how the 10-percent reduction would be achieved. One of the commenters gave anecdotal evidence that bluefish stock was declining and suggested that the reason could be overfishing or a decline in the forage fish that bluefish eat.

Response: The 10-percent reduction is the cumulative result of new stock assessment information that indicates the spawning stock biomass for bluefish is lower than previously believed, changes in overall stock productivity as reflected by updated biological reference points, and application of the Council's risk policy. The commenter is correct that Atlantic bluefish stock biomass was higher in the 1980's and overfishing occurred in the 1990's, but this trend has not continued. The species was declared overfished in 1999 and managed under a rebuilding plan until 2009, when it was declared rebuilt. Using data from the new 2015 benchmark stock assessment, bluefish were not overfished and overfishing was not occurring in 2014. The assessment also changed the biological reference points for Atlantic bluefish to better model sources of uncertainty. The peer-reviewed model captures the dynamics of the bluefish stock well and accurately reflects trends in spawning stock biomass and fishing mortality. We are approving a 10-percent reduction in catch limits because, while the spawning stock biomass estimate is greater than the overfished threshold, it is less than the biomass target, and shows a decrease from the estimate in 2013, the last year a full assessment was conducted. Further, these specifications were developed using the Council's Risk Policy.

Comment 3: One commenter suggested that NMFS was showing preference to the commercial fishery by increasing commercial quota at the expense of the stock and suggested

reducing commercial quota 5-percent.

Response: NMFS disagrees. NMFS is implementing final specifications, including the commercial quota, using the best available scientific information and following the formula outlined in the FMP, as recommended by the Council. Reducing commercial quota by 5-percent would be insufficient to achieve the necessary reduction in total landings. Through this process there is no explicit preference by NMFS for the commercial or recreational fishery and specifications are derived as outlined by the FMP. The Council could, at its discretion, revise the FMP through an amendment; however, at this time there are no pending bluefish actions that would change the commercial and recreational allocations or the specification process.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

The Assistant Administrator for Fisheries finds there is a need to implement these measures as soon as possible in order to help achieve conservation objectives for the bluefish fishery. The bluefish fishing year began on January 1, 2016, and has been operating without an established bluefish quota. Currently landings data show that some states may soon approach their quotas. Development of this final rule was undertaken as quickly as possible; however, analyzing and incorporating the most up-to-date MRIP data necessarily created a delay. Until this final rule becomes effective, there will be no bluefish quota for 2016 and therefore no

authority to close a fishery that is approaching a quota limit. A 30-day delay in implementing this final rule would delay the setting of a quota, which is necessary to properly manage and monitor bluefish stocks at the state and federal level. The need to implement these measures as soon as possible constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the 2016-2018 Atlantic bluefish specifications effective immediately upon filing with the Office of the Federal Register.

Final Regulatory Flexibility Analysis

The FRFA included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA and a summary of analyses completed to support the action. A public copy of the EA/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

The comments NMFS received did not raise specific issues regarding the economic analyses summarized in the IRFA. Refer to the “Comments and Responses” section of this preamble for more detail. No changes to the proposed rule were required to be made as a result of public comment.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses

primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the Regulatory Flexibility Act after July 1, 2016.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, an initial regulatory flexibility analysis was developed for this regulatory action using SBA's former size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. The new standard could result in 13 fewer commercial finfish businesses being considered small.

Taking this change into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of the proposed rule on small entities. Other options considered by the Council, including those that could have less of an impact on small entities, fail to meet one or more of these statutory objectives and therefore cannot be implemented. Further, the new size standard does not affect the decision to prepare a FRFA as opposed to a certification for this regulatory action

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives and derivation formula set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Furthermore, specifications must be based on the best available scientific information, consistent with National Standard 2 of the Magnuson-Stevens Act. With the specification options considered, the measures in this final rule are the only measures that both satisfy these overarching regulatory and statutory requirements while minimizing, to the extent possible, impacts on small entities. This rule implements the specifications outlined in Table 1. The impacts of the specifications, as implemented by this final rule, are not expected to disproportionately impact large or small entities.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic bluefish fishery.

In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website:

www.greateratlantic.fisheries.noaa.gov.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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